

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

05 - 11375 MLW

WESTCHESTER FIRE INSURANCE COMPANY
as subrogee of JURYS DOYLE HOTEL GROUP
USA, LTD. d/b/a JURYS DOYLE HOTEL, LLC
1133 Avenue of the Americas, 32nd Floor
New York, New York 10036

Plaintiff

v.

DJ PLUMBING & HEATING, INC.
250 North Street, Unit B-1
Danvers, Massachusetts 01923

Defendant

CIVIL ACTION NO.

MAGISTRATE JUDGE Dein

RECEIPT # 15301
AMOUNT \$ 250
SUMMONS ISSUED yes
LOCAL RULE 4.1 yes
WAIVER FORM yes
MCF ISSUED yes
BY DPTY. CLK. Tom
DATE 6/29/05
JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Westchester Fire Insurance Company, as subrogee of Jurys Doyle Hotel Group USA, LTD. d/b/a Jurys Doyle Hotel, LLC, by and through its undersigned counsel, complaining of Defendant, hereby avers, upon information and belief, as follows:

PARTIES

1. Plaintiff, Westchester Fire Insurance Company a/s/o Jurys Doyle Hotel Group USA, LTD. d/b/a Jurys Doyle Hotel, LLC (hereinafter "Westchester"), is a corporation duly organized and existing under the laws of the State of New York with a principal place of business located at 1133 Avenue of the Americas, 32nd Floor, New York, New York 10036, which at all relevant times was engaged in the insurance business and was licensed to issue insurance policies in the Commonwealth of Massachusetts.

2. Defendant, DJ Plumbing & Heating, Inc. (hereinafter "D J Plumbing"), is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business located at 250 North Street, Unit B-1, Danvers, Massachusetts 01923.

3. At all relevant times, Jurys Doyle Hotel Group USA, LTD. d/b/a Jurys Doyle Hotel, LLC (hereinafter "Jurys Doyle") owned the building located at 154 Berkley Street, Boston, Massachusetts 02116 ("premises").

4. At all relevant times, Westchester insured Jurys Doyle's business property and business operations.

JURISDICTION AND VENUE

5. Jurisdiction is based on 28 U.S.C. § 1332(a)(1) as this action involves a controversy between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper in this district based on 28 U.S.C. § 1391(a) in that the event giving rise to this claim occurred within this district.

STATEMENT OF FACTS

7. Plaintiff incorporates by reference the preceding averments as though fully set forth herein at length.

8. Jurys Doyle contracted with Suffolk Construction Company as the general contractor for the project to renovate and convert the premises at 154 Berkley Street, Boston, Massachusetts into a boutique hotel.

9. Suffolk Construction Company subcontracted with defendant DJ Plumbing to install a new water supply pipe from the street into the premises.

10. Prior to May 12, 2004, DJ Plumbing installed a new water supply pipe from the public water main into the premises.

11. On May 12, 2004, an elbow in the water supply pipe located in the basement of the premises separated, flooding the lower levels of the premises.

12. As a result of the aforementioned water supply pipe separation and subsequent flooding, Jurys Doyle's property and business was severely damaged and destroyed.

13. As a result of the aforementioned water supply pipe separation and subsequent flooding, Westchester paid its insured, Jurys Doyle, in excess of \$1,500,000.00 to repair and replace its damaged property, and is subrogated to the rights of its insured to the extent of its payment.

COUNT I – GROSS NEGLIGENCE

14. Plaintiff incorporates by reference the preceding averments as though fully set forth herein at length.

15. As the plumbing subcontractor that installed the water supply pipe in the premises, defendant DJ Plumbing owed plaintiff a duty to design, install and test the water supply pipe in a good, safe and workmanlike manner, and to make sure that the installation was free from hazardous defects that could cause failure and flooding.

16. Defendant DJ Plumbing's work violated applicable building and plumbing codes and demonstrated a flagrant disregard for the most fundamental and basic plumbing industry customs and practices.

17. The water supply pipe failure referred to in paragraph 10 and the resulting damages to Jurys Doyle's property were caused by the gross negligence, carelessness, recklessness and grossly negligent omissions of defendant, its agents, servants and/or employees acting within the course and scope of their employment in:

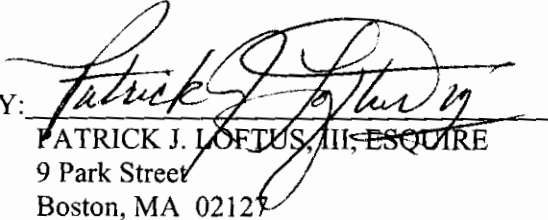
- a) violating applicable building and plumbing codes;
- b) failing to exercise reasonable care in the design and installation of the subject water supply pipe;
- c) failing to employ agents, servants and/or employees with proper licenses, knowledge, training and experience to design and install the subject water supply pipe;
- d) failing to properly train, oversee and supervise its employees, agents and subcontractors;
- e) improperly designing and installing the water supply pipe in a manner that created a clear risk of failure and flooding;

- f) failing to properly install thruster rods to support and secure the subject water supply pipe;
- g) failing to perform its work and services in a good and workmanlike manner and in accordance with all applicable Massachusetts building and plumbing codes and standards, and industry custom and practice;
- h) failing to properly inspect the water supply pipe at the subject premises to insure that it was designed and installed properly in accordance with all applicable Massachusetts plumbing and building codes;
- i) otherwise failing to use due care under the circumstances.

18. As a direct and proximate result of defendant's gross negligence, carelessness, and recklessness, Jurys Doyle sustained severe and extensive damages.

WHEREFORE, Plaintiff demands judgment against defendant, in an amount of excess of \$75,000, together with interest and the cost of this action.

BY:


PATRICK J. LOFTUS, III, ESQUIRE
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Boston, MA 02127
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OF COUNSEL:

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ATTORNEYS FOR PLAINTIFF,
WESTCHESTER FIRE INSURANCE COMPANY
A/S/O JURYS DOYLE HOTEL GROUP USA, LTD.
D/B/A JURYS DOYLE HOTEL, LLC

PHILA1\2285255\1 152046.000

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Westchester Fire Insurance Company
a/s/o Jurgis Doyle Hotel Group d/b/a Jurgis Doyle Hotel, LLC v. DJ Plumbing & Heating Inc.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.
- X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875-900.
- V. 150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).
n/a
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
n/a
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? n/a
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) _____
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? n/a
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES No OR IN THE WESTERN SECTION (BERKSHIRE FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES No
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES No (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? Eastern - Boston
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Eastern - Boston
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION _____ OR WESTERN SECTION _____

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME

Patrick J. Loftus

ADDRESS

9 Park Street, Suite 500 Boston MA 02108

TELEPHONE NO.

617-723-7770

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Westchester Fire Insurance Company
a/s/o Jungs Doyle Hotel Group USA Ltd.
d/b/a Jungs Doyle Hotel, LLC

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF New York
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

DJ Plumbing & Heating, Inc.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Middlesex
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Patrick J. Loftus
Law Office of Patrick J. Loftus, III
9 Park St., Suite 500
Boston, MA 02108
617-723-7770

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

28 USC 1332 (a)(1)

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$ 500,000
 Check YES only if demanded in complaint:
 JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
6/29/05

SIGNATURE OF ATTORNEY OF RECORD

Patrick J. Loftus

UNITED STATES DISTRICT COURT